STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

KELLY WARREN

Defendant-Appellant.
_____/

Supreme Court No.

Court of Appeals No. 333997

Circuit Court Nos. 14-8297-FH
15-8431-FH

Mecosta County Prosecutor
Attorney for the Plaintiff-Appellee

Michael C. Naughton (P70856)
North Coast Legal, PLC
Attorney for Defendant-Appellant
800 Cottageview Drive, Suite 1080
Traverse City, MI 49684
(231) 421-7076
mike@thenorthcoastlegal.com
_____/

APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

By: Michael C. Naughton (P70856)
North Coast Legal, PLC
Attorney for Defendant-Appellant
800 Cottageview Drive, Suite 1080
Traverse City, MI 49684
(231) 421-7076

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

Constitutional Provisions

STATEMENT OF JURISDICTION

Defendant-Appellant Kelly Warren was convicted in the Mecosta County Circuit Court by a guilty plea and was sentenced on January 13, 2016. A timely motion to correct invalid sentence and withdraw plea was filed on May 17, 2016. On July 1, 2016 the circuit court issued an opinion and order denying the motion. An application for leave to appeal to the Court of Appeals was filed on July 21, 2016. The Court of Appeals denied the application on November 1, 2016. Defendant-Appellant filed a pro per application for leave to appeal to this Court on December 27, 2016. On July 25, 2017 this Court remanded this matter to the Court of Appeals for consideration as on leave granted. On May 17, 2018, the Court of Appeals, in an unpublished two-to-one opinion, affirmed the trial court's denial of the motion to correct invalid sentence and withdraw plea. This Court has jurisdiction to consider this timely application. MCR 7.303(B)(1).

STATEMENT OF QUESTION PRESENTED

Did the circuit court violate Mr. Warren's rights under both the Michigan Rules of Court and the Due Process guarantees of the United States and Michigan Constitutions when it failed to advise him he was subject to consecutive sentencing and did Mr. Warren receive ineffective assistance of counsel by trial counsel when he failed to advise Mr. Warren he was subject to consecutive sentencing and failed to object to the trial court's failure to so advise Mr. Warren?

Trial court answered "no."

Mr. Warren answers "yes."

JUDGMENT APPEALLED FROM, RELIEF SOUGHT AND CONCISE ALLEGATIONS OF ERROR

The Court of Appeals affirmed the practice of taking a guilty plea without advising a defendant he would be subject to consecutive sentencing. The dissenting opinion bluntly opined "[t]o state the obvious, a plea bargain is a bargain. This means that a defendant gives up something (usually freedom), in exchange for something else." *People v Warren*, unpublished opinion of the Court of Appeals, issued May 17, 2018 (Docket No. 333997) (Gleicher, J. dissenting, p 2).

Additionally, the Due Process guarantees of the United States and Michigan Constitutions require a defendant to be fully informed before pleading guilty for a waiver of trial rights to be voluntary and knowing. *Brady v United States*, 397 US 742, 748; 90 S Ct 1463; 25 L Ed 2d 747 (1970). Though the opinion below was unpublished, one influential treatise advises that Michigan courts need not advise a defendant of the possibility of consecutive sentencing before taking a guilty plea. Gillespie, Michigan Criminal Law and Procedure (2d ed), §§ 16:31-32.

This is an issue which involves a legal principle of major significance to the state's jurisprudence, MCR 7.305(B)(3), and the Court of Appeals decision is one which is clearly erroneous and will cause a material injustice, MCR 7.305(B)(5)(a). This Court should grant leave to appeal.

STATEMENT OF FACTS

Defendant-Appellant Kelly Warren was charged with operating a motor vehicle while intoxicated, third offense, a violation of MCL 257.625, and operating a motor vehicle with a suspended license, subsequent offense, a violation of MCL 247.904. While on bond, he was charged with another count of each offense in a second incident. Ultimately, Mr. Warren pled guilty to the two counts of operating a motor vehicle while intoxicated, and the other charges were dismissed.

At the plea hearing, the circuit court stated "each of the charges carries with it, absent the habitual, is [sic] a five year maximum charge; is that correct, folks?" Plea Transcript, October 14, 2015, p 3. Both the prosecution and trial counsel for Mr. Warren agreed. The court asked Mr. Warren questions about whether he understood and accepted the plea agreement. *Id*. at 4. The court made no mention of a consecutive sentence.

On January 13, 2016, the court sentenced Mr. Warren to "24 months to 60 months in both files; those sentences are going to run consecutively. The credit is for three days served." Sentencing Transcript, January 13, 2016, p 10.

A timely consolidated motion to correct invalid sentence and withdraw plea was filed on May 17, 2016. On July 1, 2016, the circuit court issued an order denying Mr. Warren's motion. Mr. Warren sought leave to appeal to the Court of Appeals but was denied. Mr. Warren sought leave to appeal to this Court, and on July 25, 2017, this Court issued an order remanding this matter to the Court of Appeals for consideration as on leave granted with direction to compare *People v Johnson*, 413 Mich 487, 490 (1982) with *People v Blanton*, 317 Mich App 107, 119-120 (2016).

The Court of Appeals affirmed the circuit court's denial of the motion to correct invalid sentence and withdraw plea. *People v Warren*, unpublished opinion of the Court of Appeals issued May 17, 2018 (Docket No. 333997). Mr. Warren now seeks leave to appeal to this Court.

ARGUMENT

I. The circuit court violated Mr. Warren's rights under both the Michigan Rules of Court and the Due Process guarantees of the United States and Michigan Constitutions by failing to advise him he was subject to consecutive sentencing and Mr. Warren received ineffective assistance of counsel by trial counsel failing to advise Mr. Warren he was subject to consecutive sentencing and for failing to object to the trial court's failure to so advise Mr. Warren.

Issue Preservation / Standard of Review

Questions of constitutional law involving waiving constitutional rights by entering a guilty plea are reviewed *de novo*. *People v Cole*, 491 Mich 325, 330; 817 NW2d 497, 499 (2012). Violations of Michigan Rules of Court are non-constitutional errors, and violations of Due Process rights are constitutional errors, but when unpreserved both are subject to plain error review. *People v Carines*, 460 Mich 750, 763; 597 NW 2d 130 (1999).

A defendant may raise ineffective assistance of trial counsel for the first time on appeal. *People v Henry*, 239 Mich App 140, 146; 607 NW2d 767 (1999). The performance and prejudice components of an ineffective assistance of counsel claim are mixed questions of fact and law. *Strickland v Washington*, 466 US 668, 698; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Trial court findings of fact are reviewed for clear error, while questions of constitutional law are reviewed *de novo*. *LeBlanc*, 465 Mich at 579. to recognize discretion).

Analysis

Mr. Warren was not advised by the circuit court that he was subject to consecutive sentencing. This is clear from the record. MCR 6.302(B) requires advice of possible consecutive

sentencing. Even if it did not, Due Process guarantees of the United States and Michigan Constitutions require a defendant to be fully informed before pleading guilty for a waiver of trial rights to be voluntary and knowing. *Brady v United States*, 397 US 742, 748, 90 S Ct 1463, 25 L Ed 2d 747 (1970). Further, trial counsel rendered ineffective assistance of counsel by failing to advise Mr. Warren he could be subject to consecutive sentencing, and by failing to object for the circuit court's failure to so advise Mr. Warren.

A. Michigan Rules of Court require advice of possible consecutive sentencing

The Michigan Rules of Court require that before taking a guilty plea a court must advise a defendant of:

> . . . *the maximum possible prison sentence* for the offense and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c. [MCR 6.302(B)(2) (emphasis added)]

The circuit court violated this requirement by failing to advise Mr. Warren he was subject to consecutive sentencing.

In Michigan, "concurrent sentencing is the norm," and a "consecutive sentence may be imposed only if specifically authorized by statute." *People v Brown*, 220 Mich App 680, 682; 560 NW 2d 80 (1996). However, if a person charged with a felony commits a subsequent felony while on bond pending disposition of the first charge, he may be consecutively sentenced. MCL 768.7b.

Operating a motor vehicle while under the influence, third offense, carries a maximum sentence of five years in prison. MCL 257.625(9)(c)(i). Mr. Warren was sentenced to 24 to 60 months on both counts, with three days of credit. If Mr. Warren had been sentenced concurrently, the maximum amount of time he could have spent in prison would have been a

total of five years. Because Mr. Warren was sentenced consecutively, the maximum time he could spend in prison is 10 years. In effect, the five-year maximum became a 10-year maximum.

The Court of Appeals majority concluded this did not violate MCR 6.302. First, the majority noted, the text of the rule does not require advice that consecutive sentencing may apply. *Warren*, unpub op, p 4. The majority also noted this Court's statement in *People v Johnson*, 413 Mich 487, 490; 320 NW2d 876 (1982) that the rule does not require advice about "consequences such as consecutive sentencing." *Warren*, unpub op, p 4. The majority noted that *Johnson's* statement was non-binding dicta, and had been undermined by *People v Cole*, 491 Mich 325, 330; 817 NW2d 497 (2012). *Warren*, unpub op, p 4-5. The majority considered *Cole* to require advice of any "direct and automatic consequence." *Id*. at 5. The majority then relied on *People v Fonville*, 291 Mich App 363, 385; 804 NW2d 878 (2011) for the proposition that consecutive sentencing was a collateral consequence and concluded the court rule did not apply. *Id*. The dissent stated she was "unable to locate binding Michigan authority on the question of whether MCR 6.302(B) or the due process clause requires a court to advise a defendant of the possible imposition of a discretionary consecutive sentence before accepting a guilty plea." *Warren*, unpub op, p 3 (Gleicher, J., dissenting).

Whether failing to advise of the possibility of consecutive sentencing violates MCR 6.302 does not turn on whether consecutive sentencing is "direct" or "collateral," but whether consecutive sentencing affects the "maximum possible prison sentence." Because it does, failing to advise of the possibility of consecutive sentencing violates MCR 6.302.

In *People v Brown*, 492 Mich 684, 693-694; 822 NW2d 208 (2012) this Court considered whether advice of the possibility of habitual offender enhancement was required by MCR 6.302. Like consecutive sentencing, the text of the rule does not mention habitual offender

enhancement. *Brown*, 492 Mich at 694. However, the *Brown* court observed that a sentence enhanced by the habitual offender enhancement would be the "true sentence":

> . . . We hold that, before pleading guilty, a defendant must be notified of the maximum possible prison sentence with habitual-offender enhancement because the enhanced maximum becomes the "maximum possible prison sentence" for the principal offense.
>
> By not telling a defendant the potential maximum sentence because of his or her habitual-offender status, a trial court is not advising of the true potential maximum sentence. Today's holding accurately reflects the intent of MCR 6.302(B)(2), which is that a defendant be informed beforehand of the maximum sentence that would follow his or her plea of guilty. [*Id.* at 694-695.]

Mr. Warren was advised the maximum possible prison sentence he could face was five years. He ended up with a maximum of 10 years. Mr. Warren was not advised of "the maximum possible prison sentence" as is required by MCR 6.302(B)(2). As Judge Gleicher observed:

> Here, Warren faces a total of 120 months' imprisonment due to the consecutive nature of his sentences. Had he been sentenced to concurrent terms, his maximum would have been 60 months in prison. It seems to me obvious that MCR 6.302(B)(2) requires notice to a defendant of a sentencing possibility that could vastly change the amount of time that he or she must serve. [*Warren*, unpub op at 3-4 (Gleicher, J., dissenting).]

In Judge Gleicher's view, Mr. Warren was not advised of the "true sentence" he could receive as described by *Brown*. Mr. Warren is entitled to the opportunity to withdraw his plea under MCR 6.310(C).

B. Due Process requires advice of possible consecutive sentencing

A guilty plea is voluntary only if the defendant understands the direct consequences of the plea. *Brady v United States*, 397 US 742, 755; 90 S Ct 1463; 25 L Ed 2d 747 (1970). An involuntary plea violates the state and federal due process clauses. *McCarthy v United States*, 394 US 459; 89 S Ct 1166; 22 L Ed 2d 418 (1969); *People v Schulter*, 204 Mich App 60, 66; 514 NW2d 489 (1994); US Const. Am. V & XIV; Const. 1963, art 1 § 17.

Due process requires advice on the direct consequences of the plea even when the advice is not required by court rule. *United States v Ferguson*, 918 F 2d 627, 630 (CA 6, 1990) ("Aside from the requirements of Rule 11 [Fed R Crim Proc 11], a guilty plea must be voluntarily entered with a full understanding of the direct consequences of the law."); see also *United States v Littlejohn*, 224 F 3d 960, 965 (CA 9, 2000) (holding that due process requires advice on direct consequence of plea in addition to the warnings required by Fed Rule Crim Proc 11).

As stated in Judge Gleicher's dissenting opinion in the underlying appeal, "[t]o state the obvious, a plea bargain is a bargain. This means that a defendant gives up something (usually freedom), in exchange for something else. For most bargains, in law or in life, the 'something else' is well-defined." *Warren*, unpub op, p 2 (Gleicher, J., dissenting).

The Court of Appeals majority acknowledged that Due Process requirements are separate from court rule requirements and may go further. *Warren*, unpub op, p 5. However, the majority's analysis on this point was limited to whether or not consecutive sentencing is "direct" or "collateral." *Id.* As discussed above, the majority concluded the possibility of consecutive sentencing is collateral, relying on *Fonville*. *Id.*

Failing to advise a defendant of the possibility of consecutive sentencing violates Due Process because consecutive sentencing is "part of the sentence itself," and would be a "direct" rather than "collateral" consequence under that analysis.

In *Cole*, this Court considered whether a defendant could plead guilty without being advised he was subject to lifetime electronic monitoring. This Court discussed the distinction between direct and collateral consequences, but ultimately found lifetime electronic monitoring was neither, but was "*part of the sentence itself*." *Cole*, 491 Mich at 335 (emphasis in original).

Like in *Cole*, the consecutive sentence at issue here is "*part of the sentence itself*," and no inquiry into direct or collateral consequences is necessary.

But if this Court were to consider whether consecutive sentencing is a direct or collateral consequence, it should conclude it is a direct consequence. In *Cole*, this Court discussed the distinction:

> If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil. [*Cole*, 491 Mich at 334 quoting *Smith v Doe*, 538 US 84, 92; 123 S Ct 1140, 155 L Ed 2d 164 (2003).]

Here, the legislature's intent was to impose punishment. Generally, "[t]he enhancement of punishment through consecutive sentencing is a legislative action taken for the ostensible purpose of deterring certain criminal behavior." *People v Morris*, 450 Mich 316, 327; 537 NW2d 842 (1995). The purpose of consecutive sentencing is "enhance the punishment imposed upon those who have been found guilty of more serious crimes and who repeatedly engage in criminal acts." *People v Smith*, 423 Mich 427, 445; 378 NW 2d 384 (1995).

> The intended effect of section 7b can best be seen by analyzing the deterrence situation that exists before and after a felony has been charged. In general, once a criminal defendant has been charged with a felony, the level of deterrence against his commission of a second felony drops. Section 7b restores the level of deterrence to its pre-charge plateau.

People v Williams, 89 Mich App 633, 637; 280 NW2d 617 (1979).

At least nine other jurisdictions and the American Bar Association require that defendants must be advised of consecutive sentencing before pleading guilty, or that consecutive sentencing is a direct consequence.

The Iowa Supreme Court held that sentences to be served consecutively comprise "a direct consequence of a guilty plea." *State v White*, 587 NW2d 240, 243 (Iowa, 1998).

Furthermore, the court opined that failure to notify a defendant of the possibility of consecutive sentence rendered the defendant's plea "uninformed and unenlightened," and unknowledgeable about "the true maximum punishment" that may result from a consecutive sentence. *Id*. at 246. Idaho also recognizes that "the possibility of a consecutive sentence is a direct consequence of which a defendant must be informed before a guilty plea is accepted." *State v. Shook*, 144 Idaho 858, 861; 172 P3d 1133 (Idaho App, 2007).

The Alabama Court of Appeals has held "the right to know the possible sentence one faces encompasses the right to know that the circuit court may order multiple sentences to run concurrently or consecutively." *Hatfield v. State*, 29 So 3d 241, 243 (Ala App, 2009). Failure to advise a defendant of consecutive sentencing renders the plea involuntary. *Taylor v. State*, 846 So2d 1111, 1113 (Ala App, 2002).

Similarly, the Court of Appeals in Ohio has maintained that "[s]uch an understanding [of the maximum penalty for the crime] should include information as to whether defendant is eligible for consecutive or concurrent sentences." *State v. Ricks*, 53 Oh App 244, 246-247; 372 NE2d 1369 (1978).

Likewise, the Pennsylvania Supreme Court held that a court must inform a defendant, prior to accepting a guilty plea, that consecutive sentences may be imposed. *Commonwealth v Persinger*, 532 Pa 317; 615 A2d 1305 (Penn, 1992). A defendant unequipped with the knowledge that a consecutive sentence might be applied does not know "the *maximum* punishment that might be imposed for his conduct," which means "the total aggregate sentence." *Id*. at 323 (emphasis in original).

American Bar Association Standards for Criminal Justice, Standard 14-1.4(a)(ii), states that a defendant must be informed of "the maximum possible sentence on the charge, including

that possible from consecutive sentences." 3 ABA Standards for Criminal Justice (2d ed). Colorado relies on the ABA standards, finding that the trial court must give advice on consecutive sentencing for a plea to be voluntary. *People v. Peters*, 738 P2d 395 (Colo App, 1987).

The Court Rules in Indiana, Illinois and Georgia require advice on consecutive sentencing. The Indiana Supreme Court recognized that the Indiana court rules require advice on consecutive sentencing. *See West v. State*, 480 NE2d 221 (Ind, 1985). Illinois court rule, IL CS S Ct Rule 402(a)(2), requires advice on the "maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences."). Ga Uniform Superior Court Rule 33.8(C)(3)(Georgia court rule requires advice on "the maximum possible sentence on the charge, including that possible from consecutive sentences and enhanced where provided by law…").

Though MCR 6.302(B) does require a defendant to be advised of the possibility of consecutive sentencing before pleading guilty, Due Process would require the advice regardless.

C. People v Johnson compared with People v Blanton

This Court ordered the Court of Appeals to compare *Johnson*, 413 Mich 487 with *People v Blanton*, 317 Mich App 107, 894 NW2d 613 (2016) when remanding this matter. The holdings of *Johnson* and *Blanton* are not in conflict, though their dicta may be. This Court need not disturb the holdings of either case to resolve this matter as discussed above.

In *Johnson*, this Court considered whether a plea was involuntary when a court failed to advise the defendant he would not earn "good time" credit pursuant to a recently passed statute. The court noted the applicable rule did not so require, and "[n]or does the rule presently require advice as to other potential sentence consequences such as consecutive sentencing." *Johnson*,

413 Mich at 490. The holding of *Johnson* is inapplicable in this case. Whether a prisoner would earn good time credit might be relevant to the minimum sentence he would serve, but not earning good time would not increase the "the maximum possible prison sentence" which is the issue here. Further, *Johnson* only dealt with the requirements of an earlier court rule and did not discuss any Due Process requirements. Holding that defendants must be advised of the possibility of consecutive sentencing would not require this Court to revisit *Johnson*.

In *Blanton*, the defendant was not advised that his felony firearm conviction would be consecutive to another sentence. Rather than dealing with the maximum sentence, as in this case, *Blanton* dealt with the minimum sentence. There, the court looked to different language from MCR 6.302:

> Accordingly, under MCR 6.302(B)(2), a trial court must, as part of the plea colloquy, inform the defendant of "the maximum possible prison sentence for the offense *and any mandatory minimum sentence* required by law...." (Emphasis added.) Additionally, because "the 'understanding, voluntary, and accurate' components of [MCR 6.302(A)] are premised on the requirements of constitutional due process," a trial court may, in certain circumstances, be required to inform a defendant about facts not explicitly required by MCR 6.302. *Cole*, 491 Mich at 332, 817 NW2d 497. For example, although not explicitly required by MCR 6.302(B), it is well settled that a trial court must inform the defendant of any "consecutive and/or mandatory sentencing" requirements. *People v Mitchell*, 102 Mich App 554, 557, 302 NW2d 230 (1980), *rev'd in part on other grounds* 412 Mich 853, 312 NW2d 152 (1981). When a defendant is not fully informed about the penalties to be imposed, there is a "clear defect in the plea proceedings" because the defendant is unable "to make an understanding plea under MCR 6.302(B)." *Brown*, 492 Mich. at 694, 822 N.W.2d 208. A plea that is not voluntary and understanding "violates the state and federal Due Process Clauses." [*Blanton*, 317 Mich App at 119.]

Blanton is correct, but this Court does not need to reach the issue of whether the minimum sentence aspect of Mr. Warren's sentence is implicated here or explore *Blanton's*

application in that regard. The maximum sentence clearly is implicated, and that aspect of this matter requires that Mr. Warren be given the chance to withdraw his plea.

D. Mr. Warren received ineffective assistance of counsel when counsel failed to object to the court's failure to advise Mr. Warren of consecutive sentencing, and when counsel failed to so advise.[1]

The state and federal constitutions guarantee a criminal defendant the right to the effective assistance of counsel. US Const. Am VI, XIV; Const. 1963, art 1, § 20. The test for determining ineffective assistance is twofold: whether (a) "counsel's performance was deficient," and, if so, whether counsel's (b) "deficient performance prejudiced the defense." *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995) (quoting *Strickland*, 466 US at 687). Counsel's performance is deficient if it falls "below an objective standard of reasonableness under prevailing professional norms." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Prejudice against the defendant if "there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Id*. at 687-88; see also *People v Pickens*, 446 Mich 298, 314, 326; 521 NW2d 797 (1994) (adopting *Strickland* prejudice standard as matter of state constitutional law).

The constitutional right to effective assistance of counsel extends to advice given during the plea-bargaining process. *People v Douglas*, 496 Mich 557, 591-92; 852 NW2d 587 (2014). Counsel must provide advice sufficient to allow the defendant to make an informed decision whether or not to plead guilty. *People v Corteway*, 212 Mich App 442, 446; 538 NW2d 60 (1995). The advice must be reasonable; that is, within the range of competence demanded of

[1] The Court of Appeals majority discussed the issue of ineffective assistance of counsel, though that issue was not raised in Mr. Warren's brief on appeal. *Warren*, unpub op, p 6, fn 5. MCR 7.316(A)(6), governing Miscellaneous Relief, permits "the reasons or grounds of appeal to be amended or new grounds added." Mr. Warren requests this Court consider ineffective assistance of counsel at the time of the plea and sentencing.

attorneys in criminal cases. *People v. Thew*, 201 Mich App 78, 89-90; 506 NW2d 547 (1993). "Where … a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" *Hill v Lockhart*, 474 US 52, 56; 106 S.Ct. 366; 88 L.Ed.2d 203 (1985).

Counsel's advice fell far outside "the range of competence demanded of attorneys in criminal cases." The record is bereft of any indication that trial counsel provided Mr. Warren with any notice that he could be facing consecutive sentencing as a consequence of him taking a plea.

Trial counsel's failure to notify Mr. Warren of the trial court's discretion to sentence Mr. Warren to consecutive terms of imprisonment is enough to satisfy the first *Strickland* prong: that counsel gave insufficient advice during the plea-bargaining process. Additionally, trial counsel's failure to advise is also enough to satisfy the second prong that "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 US at 59.

The appropriate remedy is to remand for a hearing to determine if Mr. Warren was denied effective assistance of counsel in the plea-taking process and, if so, to allow him to withdraw his plea and stand trial. See *Thew*, 201 Mich App 95-96 (remanding to determine "whether defense counsel rendered effective assistance of counsel by making certain that defendant was aware of the nature of the charges and the consequences of his guilty plea.

RELIEF REQUESTED

Mr. Warren respectfully requests this Honorable Court grant his appeal and remand this matter to the Circuit Court for resentencing or, in the alternative, permit him to withdraw his plea and proceed to trial in this matter.

Respectfully submitted,

NORTH COAST LEGAL, PLC.

MICHAEL C. NAUGHTON (P 70856)
NORTH COAST LEGAL, PLC
Attorney for Defendant-Appellant
800 Cottageview Drive, Suite 1080
Traverse City, MI 49684
(231) 421-7076

Dated: July 12, 2018